



# Commonwealth of Massachusetts

## State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 496

### IN THE MATTER OF JOAN MENARD

### DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Joan Menard ("Rep. Menard") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On June 22, 1993, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into allegations that Rep. Menard had violated the conflict of interest law, G.L. c. 268A. The Commission has concluded its inquiry and, on February 25, 1994, voted to find reasonable cause to believe that Rep. Menard violated G.L. c. 268A, §3.

The Commission and Rep. Menard now agree to the following facts and conclusions of law:

1. Rep. Menard has served in the state legislature from January 1979 to the present. During that time, she has served on various committees, including Ways & Means from 1988 to 1990. Rep. Menard also served as assistant majority whip from 1990 until 1992, when she became majority whip.

2. Rep. Menard has co-sponsored three bills affecting the insurance industry.<sup>1/</sup>

3. In addition, Rep. Menard, as a member of various legislative committees, has participated in many hearings on bills of interest to the insurance industry. Such participation has included voting on whether such bills should be reported out of committee. Rep. Menard has also voted on bills of interest to the insurance industry when they reached the House floor.

4. During the period relevant here, F. William Sawyer ("Sawyer") was a second vice-president for John Hancock Mutual Life Insurance Company, Inc. ("Hancock"). As such he acted as Hancock's senior lobbyist responsible for Massachusetts legislation. At all relevant times, Sawyer was a registered legislative agent (for Hancock) in Massachusetts. Hancock, a Massachusetts corporation, is the nation's sixth largest life insurer doing business in all 50 states. It offers an array of life, health and investment products. As a Massachusetts domiciled life insurer, its activities are more comprehensively regulated by Massachusetts than by any other state.

5. At all relevant times, Rep. Menard knew that Sawyer was a Massachusetts registered lobbyist for Hancock. On occasion, Sawyer lobbied Rep. Menard regarding various pieces of legislation.

6. Lobbyists are employed to promote, oppose or influence legislation.

7. One way in which some lobbyists further their legislative goals is to develop or maintain goodwill and personal relationships with legislators to ensure effective access to them. Some lobbyists entertain legislators through meals, drinks, golf and sporting events in order to develop the desired goodwill and personal relationships.

8. On the evening of June 17, 1992, Rep. Menard and Sawyer and their spouses ate dinner at Jasper's Restaurant in Boston. Sawyer paid for the meal. The Menards' pro rata share of the cost of the dinner was

\$179.63.<sup>2/</sup>

9. Section 3(b) of G.L. c. 268A prohibits a state employee from directly or indirectly receiving anything of substantial value for or because of any official act or act within her official responsibility performed or to be performed by her.

10. Massachusetts legislators are state employees.

11. Anything worth \$50 or more is of substantial value for §3 purposes.<sup>3/</sup>

12. By accepting a total of \$179.63 in drinks and food from Sawyer while Rep. Menard was in a position to take official actions which could benefit that lobbyist, Rep. Menard accepted items of substantial value for or because of official acts and/or acts within her official responsibility performed or to be performed by her. In doing so she violated §3(b).<sup>4/</sup>

13. The Commission is aware of no evidence that the gratuity referenced above was provided to Rep. Menard with the intent to influence any specific official act by her as a legislator or any particular act within her official responsibility. Also, the Commission is aware of no evidence that Rep. Menard took any official action concerning any proposed legislation which would affect Hancock in return for the gratuity. However, even though the gratuity was only intended to foster official goodwill and access, it was still impermissible.<sup>5/</sup>

14. Rep. Menard has fully cooperated with the Commission throughout this investigation.

In view of the foregoing violation of G.L. c. 268A by Rep. Menard, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Rep. Menard:

(1) that Rep. Menard pay to the Commission the sum of five hundred and twenty five dollars (\$525.00) for violating G.L. c. 268A, §3(b);<sup>6/</sup> and

(2) that Rep. Menard waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement and in any related administrative or judicial proceedings to which the Commission is or may be a party.

**Date: July 19, 1994**

<sup>1/</sup> According to Rep. Menard, the bills were consumer oriented and adverse to the insurance industry. The bills are as follows: Co-sponsor: 1986, H. 2034 (authorizing joint life coverage); Co-sponsor: 1989, H. 4374 (increasing existing mandated mental illness benefit); Co-sponsor: 1989, H. 4376 (requiring health insurance policies to cover services of rehabilitation counselor); Co-sponsor: 1992, H. 1918 (same as 1989 H. 4376).

<sup>2/</sup> Rep. Menard testified that she had a casual friendship with Sawyer; however, she acknowledges that this was not the motivating factor in Sawyer paying for the cost of the dinner.

<sup>3/</sup> See *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); *EC-COI-93-14*.

<sup>4/</sup> For §3 purposes, it is unnecessary to prove that the gratuities given were generated by some specific identifiable act performed or to be performed. As the Commission explained in *Advisory No. 8*, issued May 14, 1985, prohibiting private parties from giving free tickets worth \$50 or more to public employees who regulate them,

Even in the absence of any specifically identifiable matter that was, is or soon will be pending before the official, §3 may apply. Thus, where there is no prior social or business relationship between the giver and the recipient, and the recipient is a public official who is in a position to use [his] authority in a manner which could affect the giver, an inference can be drawn that the giver was seeking the goodwill of the official because of a perception by the giver that the public official's influence could benefit the giver. In such a case, the gratuity is given for his yet unidentifiable "acts to be performed."

Specifically, §3 applies to generalized goodwill-engendering entertainment of legislators by private parties, even where no specific legislation is discussed. *In re Flaherty*, 1991 SEC 498, issued December 10, 1990 (majority leader violates §3 by accepting six Celtics tickets from billboard company's lobbyists). *In re Massachusetts Candy and Tobacco Distributors, Inc.*, 1992 SEC 609 (company representing distributors violates §3 by providing a free day's outing [a barbecue lunch, golf or tennis, a cocktail hour and a clam bake

dinner], worth over \$100 per person, to over 50 legislators, their staffers and family members, with the intent of enhancing the distributors' image with the Legislature and where the legislators were in a position to benefit the distributors).

Section 3 applies to meals and golf, including those occasions motivated by business reasons, for example, the so-called "business lunch". *In re U.S. Trust*, 1988 SEC 356. Finally, §3 applies to entertainment gratuities of \$50 or more even in connection with educational conferences. *In re Stone & Webster*, 1991 SEC 522, and *In re State Street Bank*, 1992 SEC 582.

On the present facts, §3 applies to the lobbyist entertaining Rep. Menard where the intent was generally to create goodwill and the opportunity for access, even though specific legislation was not discussed.

<sup>5/</sup> As discussed above in footnote 4, §3 of G.L. c. 268A is violated even where there is no evidence of an understanding that the gratuity is being given in exchange for a specific act performed or to be performed. Indeed, any such *quid pro quo* understanding would raise extremely serious concerns under the bribe section of the conflict of interest law, G.L. c. 268A, §2. Section 2 is not applicable in this case, however, as there was no such *quid pro quo* between the lobbyist and Rep. Menard.

<sup>6/</sup> This amount is approximately three times the value of the \$179.63 prohibited gratuity received by Rep. Menard in violation of §3. It represents both a disgorgement of the gratuity and a civil sanction.